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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,493	01/18/2002	Peter Kenneth Seear	U 013833-2	7319

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05/14/2003

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EXAMINER

KRECK, JOHN J

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 05/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/052,493

Applicant(s)

SEEAR ET AL

Examiner

John Kreck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, drawn to apparatus for mining, classified in class 299, subclass 42.
  - II. Claims 6-11, drawn to a method for mining, classified in class 299, subclass 18.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus can be used for highwall mining.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Clifford Mass on 5/8/03 a provisional election was made with traverse to prosecute the invention of group I, claims 1-5. Affirmation of this election must be made by applicant in replying to this Office action. Claims 6-11 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Objections***

3. Claim 4 is objected to because of the following informalities: in line 1, please change "2" to -3-. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1- are rejected under 35 U.S.C. 103(a) as being unpatentable over Young, et al. (U.S. Patent number 3,395,940) in view of Plumley (U.S. Patent number 5,634,545).

Young teaches a mining apparatus including a conveyor (described on col. 2, line 33); and an auger mining machine.

Young fails to show the details of the conveyor, and thus fails to show the conveyor adapted to receive at the forward end material mined in forming the road.

Plumley shows a conveyor system for a mining apparatus, which includes a hopper (16) which adapts it to receive material at the forward end. The Plumley conveyor is useful because it is self-propelled, and can easily deliver mined material to a fixed location from a mobile miner.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used a conveyor adapted to receive material at the forward end as called for in claim 1, as shown by Plumley with the mining apparatus of Young, in order to deliver the mined material to a fixed location from the mobile miner.

With regards to claim 2, Plumley teaches a hopper(16), which is used to prevent large amounts of coal from overwhelming the conveyor. It would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Young apparatus to have included the conveyor with a hopper, as called for in claim 2, in order to prevent large amounts of coal from overwhelming the conveyor.

With regards to claim 3; Young shows the auger base with cradle (including 84, see figures 9 and 11); a motor and drive assembly (41,40); a boom assembly ( including 87 and 91, see figure 12); and the boom assembly including a member (98,99) movable in a direction parallel to the conveyor to position auger segments. Young fails to show the conveyor pan.

Plumley teaches the conveyor has a pan. A conveyor pan is used with a chain conveyor, and prevents coal from falling on the mine floor. It would have been further

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obvious to one of ordinary skill in the art at the time of the invention to have modified the Young apparatus to have included a conveyor having a pan as called for in claim 3, in order to keep coal from falling on the floor.

With regards to claim 4, it would have been further obvious to one of ordinary skill in the art at the time of the invention to have placed the pan under the auger mining machine, since Young teaches that the conveyor is located beneath the machine.

With regards to claim 5; Young (940) shows the first (1,2 ) and second base portions ( 3 see col. 3, lines 69-70); the cradle on the second portion; and the first drill head (41,40) on the first portion. Young fails to show the second drill head, however, it is established in patent law that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. It would have been further obvious to one of ordinary skill in the art at the time of the invention to have further modified the Young device to have a second drill head on the second base portion as called for in claim 5, in order to drill two holes at once.

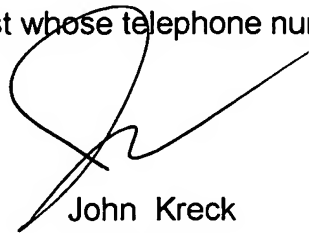
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 2229747A and RU 2024744 C1 show similar systems. Gallis (U.S. Patent number 3,897,976); Adams (U.S. Patent number 3,114,425); and Walsh (U.S. Patent number 4,309,059) show similar systems which deposit the coal onto a running conveyor. Deeter, et al. (U.S. Patent number 5,695,016); Adams, et al. (U.S. Patent number 3,281,187); and Young, et al. (U.S. Patent number 3,760,915) show similar systems with multiple augers and various boom systems.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 6:00 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3597 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-4177.

A handwritten signature in black ink, appearing to be 'John Kreck', written over a horizontal line.

John Kreck  
Examiner  
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JJK  
May 13, 2003